



COMMONWEALTH of VIRGINIA

W. Tayloe Murphy, Jr.
Secretary of Natural Resources

DEPARTMENT OF ENVIRONMENTAL QUALITY

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Director

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STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION ORDER BY CONSENT ISSUED TO W-L Construction & Paving, Inc. Registration No. 11119

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1 – 1301 and 10.1 – 1184, between the State Air Pollution Control Board and the W-L Construction & Paving Inc. for the purpose of resolving certain violations of State Air Pollution Control Board Regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Air Pollution Control Board, a collegial body of the Commonwealth of Virginia described in § 10.1-1301 and § 10.1-1184 of the Code.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Regional Office" means the Southwest Regional Office of the Department.
6. "Order" means this document, also known as a Consent Order.
7. "Regulations" means the "State Air Pollution Control Board Regulations for the Control and Abatement of Air Pollution", which have been incorporated into Title 9 of the Virginia Administrative Code (VAC).
8. "Company" means W-L Construction & Paving, Inc., P.O. Drawer 927, Chihowie, Virginia 24319 (Site location, 3725 Blacklick Road, Rural Retreat, Virginia).

SECTION C: Findings of Facts and Conclusions of Law

1. W-L Construction & Paving, Inc. owns and operates a portable continuous drum mix asphalt concrete plant at 3725 Blacklick Road in Rural Retreat, Virginia.
2. W-L Construction & Paving, Inc. was issued a Virginia Stationary Source Permit to operate an asphalt plant on October 18, 1991.
3. 9 VAC 5-40-5620.B – (Open burning prohibitions) of the Commonwealth of Virginia State Air Pollution Control Board Regulations for the Control and Abatement of Air Pollution states in part “No owner or other person shall cause or permit open burning or the use of a special incineration device for the disposal of rubber tires, asphaltic materials, crankcase oil, impregnated wood or other rubber or petroleum based materials except when conducting bona fide fire fighting instructions at fire fighting schools having permanent facilities.
4. On November 3, 2004, DEQ received a Pollution Report (2005-S-0216) alleging open burning and black smoke at your asphalt facility located off Blacklick Road in Rural Retreat, Virginia. Initial investigation found no evidence of open burning. Videotape was later mailed to DEQ, SWRO showing the black smoke and flames coming from the asphalt plant area on the afternoon of November 3, 2004. The videotape was hand carried to W-L's corporate office on December 6, 2004 for their viewing. On December 10, 2004 Mr. Aaron Taylor of W-L telephoned Ms. Bazyk and stated that they had concluded that the open burning was of diesel fuel in the wheel loader bucket to heat and assist with removable of hardened asphalt. The open burning of asphaltic materials and petroleum based materials is prohibited under Virginia regulations.
5. On December 17, 2004, DEQ sent a Notice of Violation Letter (NOV No. 12-11-04) for a permit violation, by Certified Mail-Return Receipt Requested, to W-L Construction & Paving, Inc., informing the Company that DEQ had reason to believe that a violation of Air Pollution Law and Regulations 9 VAC 5-40-5620.B had occurred.

SECTION D: Agreement and Order

1. Accordingly, the Board, by virtue of the authority granted it in Va. Code §10.1 – 1316 (C), orders W-L Construction & Paving, Inc. and W-L Construction & Paving Inc. agrees to pay a civil charge of \$1,000 within 30 days of the effective date of this Order. Payment shall be made by check payable to the “Treasurer of Virginia”, delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

For purposes of properly identifying its payment, W-L Construction & Paving, Inc. shall include with the check, a notification of its Registration Number, Federal Identification Number and the fact that payment is being made in accordance with the terms of this Order.

2. W-L Construction & Paving, Inc. shall post a memorandum at all asphalt plant sites stating that the open burning of petroleum based products is prohibited by Virginia Regulations.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of W-L Construction & Paving, Inc. for good cause shown by the Company, or on its own motion after notice and opportunity to be heard.
2. Nothing herein shall be construed as altering, modifying, or amending any term or condition contained in the Company's Virginia Stationary Source Permit to Operate dated October 18, 1991.
3. This Order addresses only those violations specifically identified herein. This Order shall not preclude the Board or Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of W-L Construction & Paving, Inc. as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect appropriate enforcement actions by other federal, state, or local regulatory authority, whether or not arising out of the same or similar facts.
4. By entering into this Order, W-L Construction & Paving, Inc. admits the jurisdictional allegations, factual findings, or conclusions of law contained herein. For purposes of this Order and subsequent actions with respect to this Order, W-L Construction & Paving, Inc. agrees not to challenge the jurisdictional allegations, factual findings, and conclusions of law contained herein.
5. W-L Construction & Paving, Inc. consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
6. W-L Construction & Paving, Inc. declares it has received fair and due process under the Administrative Process Act, Code §§ 9-6.14:1 et seq., and the State Air Pollution Control Law, and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board or Director to enforce this Order.
7. Failure by W-L Construction & Paving, Inc. to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
8. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
9. W-L Construction & Paving, Inc. shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made

impossible by earthquake, flood, other act of God, war, strike, or such other occurrence. W-L Construction & Paving, Inc. must show that such circumstances resulting in noncompliance were beyond its control and not due to a lack of good faith or diligence on its part. W-L Construction & Paving Inc. shall notify the Director, Southwest Regional Office of DEQ within 24 hours with a follow-up in writing within seven days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:

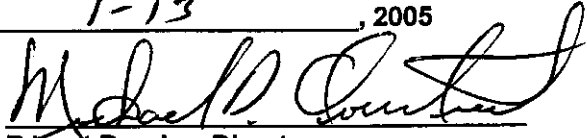
- a. the reasons for the delay or noncompliance;
- b. the projected duration of such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Director, Southwest Regional Office of DEQ within 24 hours of learning of any condition listed above, which the Company intend to assert will result in the impossibility of compliance, shall constitute waiver of any claim of inability to comply with a requirement of this Order.

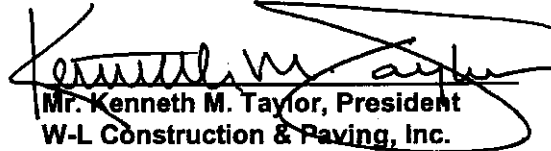
10. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.
11. This Order shall become effective upon execution by both the Director or his designee and W-L Construction & Paving, Inc. Notwithstanding the foregoing, the Company agrees to be bound by any compliance date, which precedes the effective date of this Order.
12. This Order shall continue in effect until the Director or the Board determines W-L Construction & Paving, Inc. has met all the conditions of the order and the Company is thereafter notified of compliance by the Department. Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve W-L Construction & Paving, Inc. from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

13. By its signature below, W-L Construction & Paving, Inc. voluntarily agrees to the issuance of this Order.

And it is ORDERED this day of 1-13, 2005


for Robert Burnley, Director
Department of Environmental Quality

W-L Construction & Paving, Inc. voluntarily agrees to the issuance of this Order.


Mr. Kenneth M. Taylor, President
W-L Construction & Paving, Inc.

Date: 1-13-2005

Commonwealth of Virginia

City/County of Smyth

The foregoing document was signed and acknowledged before me this 13th day of
January, 2005 by Kenneth M. Taylor on behalf of W-L
Construction & Paving Inc.

Date: 1/13/05


Notary Public

1. My commission expires: June 30, 2008